In the
Supreme Court of the United States

OCTOBER TERM, 1976

NO. 76 - 654

ROBERT LEE PARKER,
Petitioner

versus

SOUTH LOUISIANA CONTRACTORS, INC., SOLOCO PIPELINE CONTRACTORS, INC., MARTIN EXPLORATION CORPORATION and H. J. SERRETTE
Respondents

REPLY BRIEF ON BEHALF OF SOUTH LOUISIANA CONTRACTORS, INC. and SOLOCO PIPELINE CONTRACTORS, INC., RESPONDENTS

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Petitioner Robert Lee Parker has filed a petition for certiorari from the judgment and decision of the Fifth Circuit Court of Appeals August 16, 1976, affirming the summary judgment of the United States District Court, Eastern District of Louisiana, in favor of respondents. A petition for rehearing and a petition for rehearing en banc was filed by petitioner and denied September 17, 1976.

The petitioner has stated that a conflict exists between the United States Courts of Appeal for the First and Fifth Circuits, and that there is jurisdiction in the federal courts on the following bases: (1) admiralty and general maritime law under 28 USC §1333; (2) the Admiralty Extension Act, 46 USC § 740; (3) the 1972 Amendments to the LHWCA; and (4) 28 USC §1337, which confers jurisdiction in civil actions arising under Acts of Congress regulating commerce.

The facts as found by the Fifth Circuit Court of Appeals and contained in its opinion are as follows:

> "At the time of the accident, Parker was employed as a truck driver by Atlas Truck Lines, Inc. On August 5, 1974, he was instructed to deliver a truckload of pipecasing to Martin Exploration Corporation at the Butte-LaRose landing on the Atchafalaya River. From there, he and the truck he was driving were transported by barge to another landing on the east bank of the Atchafalaya in Iberville Parish, Louisiana, near an oil well drilling site located on land. After arriving there late at night, Parker was to drive his truck off the barge along a steel ramp designed for the loading and unloading of overland vehicles. The ramp, which weighed several tons, rested on land and had an apron extending over the water's edge which could be raised and lowered by winches to permit ingress and egress from docking barges. Before driving his truck off the barge, Parker walked along the ramp, a board road, and beyond, reconnoitering the route toward the drilling site. On his way back to the barge, he overheard members of the barge's crew saying that one of the winches was stuck. In the process of walking across the ramp to render assistance, he slipped in the unilluminated gap that ran longitudinally along the center of the ramp and suffered a severe injury to his right foot and other injuries complained of in this litigation." 537 F. 2d 113, 114-115(5 Cir. 1976).

ALLEGED CONFLICT BETWEEN THE FIRST AND FIFTH CIRCUITS

Petitioner has alleged there is a conflict between the First and Fifth Circuits as to whether an accident occurring on a ramp gives rise to admiralty and general maritime jurisdiction under 28 USC 1333. Petitioner cites the case of *Reyes v. Maritime Enterprises, Inc.*, 494 F.2d 866 (1st Cir., 1974) as creating the conflict in the two circuits. Petitioner is completely incorrect in this assertion. The *Reyes* case, *supra*, involved a small movable gangway suspended from the tower on the pier, which was the regular means of boarding ship. The Court held it was a gangway, and part of the vessel's equipment. This is completely unlike the present case, as the structure involved is not a gangway at all, and so held by the Fifth Circuit, but a large metal ramp mounted on land and weighing several tons and used to drive vehicles on to barges from shore and vice versa. The photographs in evidence in this case clearly reflect the structure to be fully resting on land and supported by land, and without a doubt an extension of land, and in no way equipment of a vessel.

The Fifth Circuit correctly held that the structure on which petitioner was injured most closely resembled a dock or pier, and therefore did not come within the admiralty jurisdiction, stating at page 116 as follows:

> "Since Parker's accident thus occurred on a land-based structure most closely resembling a dock or pier, we conclude that his claim does not come within admiralty jurisdiction under the principles reiterated in *Victory Carriers* regarding extensions of land."

The decision of the Fifth Circuit is completely consistent with prior clear and established principles set out by this Honorable Court.

In *Victory Carriers, Inc. v. Law*, 404 U.S. 202, 30 L.Ed. 383, 92 S. Ct. 418 (S. Ct. Dec. 13, 1971), the Supreme Court held that maritime law was not applicable to an injury suffered by a longshoreman on the dock by allegedly defective equipment owned and operated by his stevedore employer. The Court stated at pages 387 and 388 of 30 L.Ed. 2d as follows:

> ". . .as Mr. Justice Story remarked long ago:
>
> 'In regard to torts I have always understood, that the jurisdiction of the admiralty is exclusively dependent upon the locality of the act. The admiralty has not, and never (I believe) deliberately claimed to have any jurisdiction over torts, except such as are maritime torts, that is. such as are committed on the high seas, or on waters within the ebb and flow of the tide.' *Thomas v. Lane*, 23 F. Cas 957, 960 (No. 13,902) (CC Me 1813)
>
> The view has been constantly reiterated."
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> . . . . .
>
> "But, accidents on land were not within the maritime jurisdiction as historically construed by this Court. Piers and docks were consistently deemed [404 US 207] extensions of land; . . ."

In *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352, 23 L.Ed. 360, 89 S.Ct. 1835, the Supreme Court held that the Death on the High Seas Act was inapplicable to accidents involving a Louisiana offshore platform. The *Rodrigue* case involved the death of two workers, Dore and Rodrigue, involving permanent offshore platforms. The facts of the *Dore* case are noteworthy, and the Court stated at page 363 of 23 L.Ed. 2d as follows:

> "In the *Dore* case, the decedent was working on a crane mounted on the artificial island and being used to unload a barge. As the crane lifted a load from the barge to place it on the artificial island, the crane collapsed and toppled over onto the barge, killing the worker."
>
> . . . . . .
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> "The suit was brought under the 'General Maritime Laws, the Death on the High Seas Act, . . . Article 2315 of the [Louisiana Code] and under the other laws of the United States and the State of Louisiana.' "

The Court further stated in the *Rodrigue* case that admiralty jurisdiction has not been construed to extend to accidents on piers, jetties, bridges, or even ramps or railways running into the sea. This is stated at page 366 of the opinion:

> "Admiralty jurisdiction has not been construed to extend to accidents on piers, jetties, bridges, or even ramps or railways running into the sea."

Therefore, under well established legal principles, there would not be any admiralty jurisdiction of accidents occurring on "ramps or railways running into the sea". Even if the ramp in question is not considered analogous to a dock or pier, it is certainly a ramp such that under the *Rodrigue* case, *supra*, there would be no admiralty jurisdiction.

It is undisputed that petitioner was located on the ramp and was walking from one side of the ramp to the other at a location on the ramp between the grating areas at the time of the accident. Furthermore, the petitioner did not fall off the ramp, and did not fall into the water, but remained on the ramp in the area between the two sections or tracks of the ramp.

Even if the petitioner had fallen off the edge of the ramp which is over the water, into the water, there would still be no admiralty jurisdiction, and Louisiana law would still apply. This was so held in *Bible v. Chevron Oil Co.*, 460 F. 2d 1218 (5th Cir. 1972) which involved a platform in Louisiana territorial waters. The Court held at pages 1219 and 1220 of the opinion:

> "Bible was injured when he was pulled off the drilling platform by a defective winch apparatus, striking a platform support beam before falling several more feet into the sea. Since the substance and consummation of the occurrence giving rise to the injuries sustained took place on the drilling platform, the fact that Bible ultimately wound up in the drink does not transform this 'land based' injury into a maritime injury. See *T. Smith & Sons v. Taylor*, 1928, 276 U.S. 179, 48 S.Ct. 228, 72 L.Ed. 520; *Bertrand v. Forest Corp.*, 5 Cir. 1971, 441 F.2d 809, cert. denied, 1971, 404 U.S. 863, 92 S.Ct. 106, 30 L.Ed. 2d 107; *LaLande v. Gulf Oil Corp.*, W.D.La. 1970, 317 F.Supp. 692. Cf. *Pure Oil Co. v. Snipes*, 5 Cir. 1961, 293 F.2d 60, 1961 A.M.C. 1651. Bible does not seriously argue to the contrary. The District Court was clearly correct in determining this to be a nonmaritime tort."

There is no doubt but that in the present case, the substance and consummation of the occurrence giving rise to the injury sustained took place on the ramp.

The Fifth Circuit pointed out in footnote 3, page 115 of its opinion, the decision of *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 93 S.Ct. 493, 34 L.Ed. 2d 454 (1972). In that case this Honorable Court held that a wrong must "bear a significant relationship to traditional maritime activity" in addition to complying with the established "locality" test, in order for admiralty jurisdiction to attach. The Fifth Circuit went on to point out that the effect of this was to make the test for admiralty jurisdiction even more stringent than it was under the locality test alone.

Therefore, it is clear both from the factual and legal standpoints that there is in fact no split, or conflict in the Circuits and that the Fifth Circuit has complied with and followed the jurisdictional test as set out by this Honorable Court, and that the result in the instant case was in fact, and in law, compelled by the prior decisions of this Honorable Court.

THE 1972 AMENDMENTS TO THE LONGSHORE ACT DID NOT EXPAND ADMIRALTY AND MARITIME JURISDICTION, NOR DID THEY LEGISLATIVELY OVERRULE

THE SUPREME COURT DECISION OF VICTORY CARRIERS, INC. V. LAW, 404 U.S. 202 (1971)

Petitioner incorrectly states that if he is subject to the Longshoremen and Harbor Workers' Compensation Act, under the expanded coverage of 33 USC 903(a), there is automatic expanded admiralty jurisdiction as to any tort he alleges occurred. This of course is incorrect. The USL merely provides a compensation remedy between the employee and his employer. Petitioner's employer is not a party to these proceedings. Furthermore, it could not be as petitioner's remedy in compensation is an administrative proceeding.

The 1972 Longshore amendments clearly cover persons on land engaged in the building of new vessels, but this certainly does not mean that if a third party negligently injures a person on land building a vessel, that there is admiralty jurisdiction by the injured employee working on land against the tort feasor.

A review of the legislative history in no way reflects any intent to expand the admiralty and maritime jurisdiction nor does it in any way reflect any intent to overrule the case of *Victory Carriers, Inc. v. Law, supra.*

The Fifth Circuit opinion at pages 116-118 contains a complete discussion of the 1972 Longshore Act amendments in this regard and correctly determines that the boundaries of maritime jurisdiction were neither expanded or constricted by the passage of the 1972 amendments, but simply retained. Therefore, petitioner's attempted reliance on the 1972 Longshore amendments expanding admiralty and maritime jurisdiction regarding tort actions, is completely misplaced.

THE ADMIRALTY EXTENSION ACT, 46 USC 740 IS CLEARLY NOT APPLICABLE

The Admiralty Extension Act permits admiralty jurisdiction in situations in which damage or injury to persons or property is "caused by a vessel on navigable water, notwithstanding that such damage or injury be done or consummated on land."

Therefore, the tort must be perpetrated from a vessel, and consummated on land, i.e., when a vessel strikes a wharf or a bridge, or other shoreside facility. The steel ramp in question was resting on land and was in no way floating, could not be floated, and could not in any way be considered a vessel. Both the substance and the consummation of the occurrence giving rise to the injury in the present case took place on the ramp. Therefore, any allegation of jurisdiction under the Admiralty Extension Act is without substance or merit.

THERE IS NO JURISDICTION UNDER 28 USC 1337 WHICH PROVIDES FOR JURISDICTION ARISING UNDER ACTS OF CONGRESS REGULATING COMMERCE OR PROTECTING TRADE AND COMMERCE AGAINST RESTRAINTS AND MONOPOLIES.

The petitioner states that the Longshoremen and Harbor Workers' Compensation Act and most particularly the Jones Act, dictate that the present case should come under this statute. Firstly, the petitioner is in no way claiming in these proceedings any claim against his employer under the Longshoremen and Harbor Workers' Compensation Act, or under the Jones Act, 46 USC 688, which gives seamen the right to sue their employer for negligence. As a matter of fact, the petitioner's employer is not a party to these proceedings. Indeed, the petitioner's employer could not be a party to these proceedings as any claim petitioner has against his employer, if it would be under the USL as petitioner states, would be an administrative proceeding, and not this suit.

The Longshore Act, 33 USC 905(b) merely preserves an injured worker's right to claim against third parties in accordance with non-statutory negligence principles, and could not be the basis for section 1337. This is particularly so, since any such non-statutory negligence claim against a third party would in no way arise under any "Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies."

CONCLUSION

Because of the foregoing, it is submitted that the decision of the Fifth Circuit is correct in all respects, both factually and legally, and the petition for writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE

I hereby certify that a copy of the above and foregoing reply brief has been forwarded to all counsel of record by depositing same in the U.S. Mail, postage prepaid, addressed to their offices, this 13th day of January, 1977.

DONALD L. KING